

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS**

FILED

APR 07 2021

Clerk, U.S. District Court
Eastern District of Texas

**CRAIG CUNNINGHAM,
Plaintiff,**

V_o

Big Think Capital, Inc., et al

Defendant

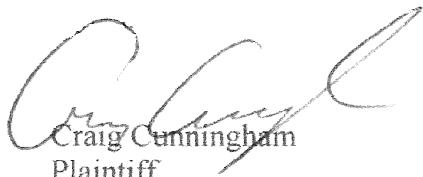
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6 4:20-cv-000724-ALM-KPJ

Plaintiff's Response in Opposition to the Defendant's Motion to Vacate

1. The Defendants in this case willfully defaulted.
2. The Defendants were properly served with this lawsuit and already knew of a class action lawsuit filed by the Plaintiff against the same company in New York for prior offending telemarketing calls in Cunningham v Big Think 2:19-cv-00638. The Defendants were acutely aware of who the Plaintiff was and that the Plaintiff did not want to receive telemarketing calls for a year prior to the instant lawsuit and even after the filing and service of this current lawsuit still refused to file a responsive pleading.
3. This is an intentional failure to respond to litigation.
4. Furthermore, the defendants are liable to maintain their current address on file with the secretary of state of New York and they have not presented any evidence that they had terminated their leasing of the office space at the location on file with the New York Secretary of State.

5. As a corporate officer, Dan Israel is also able to be served on behalf of the corporation and his lack of awareness concerning what to do aside, service upon the corporation was proper upon him as well as the individual service upon him.
6. **Setting aside the default would cause prejudice to the Plaintiff.**
7. Phone records are perishable items and setting aside a default after this lengthy delay caused by the Defendants would be prejudicial to the Plaintiff as phone records in this case would be more difficult to obtain.
8. **The Defendants in this case have not advanced a meritorious defense in their motion**
9. The Defendants have not advanced a meritorious defense in their motion and as such any attempts to overturn the default should be rejected. The Plaintiff's damage calculation can be reviewed by the court at any later point, this is not a meritorious defense.
10. The Defendants have not shown any evidence or even stated the type of dialing system they used, but rather just suggest that the dialing platform isn't an ATDS because of the content of the messages sent. This is not a meritorious defense.



Craig Cunningham
Plaintiff,

4/7/2021

Craig Cunningham, Plaintiff, Pro-se 3000 Custer Road, ste 270-206, Plano, Tx 75075

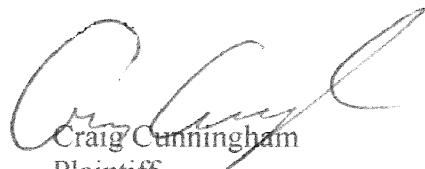
615-348-1977

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS

CRAIG CUNNINGHAM, Plaintiff,	§ § § § § 4:20-cv-000724-ALM-KPJ
v.	§ § § § §
Big Think Capital, Inc. et al	§ § § § §
Defendant	§ § § § §

Plaintiff's Certificate of Service

I hereby certify a true copy of the foregoing was mailed to the defendants in this case via USPS
First class mail and process server



Craig Cunningham
Plaintiff, 4/7/2021

Craig Cunningham, Plaintiff, Pro-se 3000 Custer Road, ste 270-206, Plano, Tx 75075

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